

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.12.2017

CORAM

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

Writ Petition No.19238 of 2003

1.M.Anjalai (deceased)

W/o.Late Muthiah

2.M.Krishnamoorthy

3.M.Savithiri

4.M.Dhanapal

5.M.Sempulingam

6.M.Sivakumar

..... Petitioners

P2 to P6 are substituted as legalheirs of deceased  
P1-M.Anjalai, as per order dated 03.08.2016  
in WMP.No.12562 of 2016 in WP.No.19238 of 2003.

versus

1.The Union of India

Represented by its Secretary  
Ministry of Home Affairs  
New Delhi.

2.The Under Secretary to Government  
of India, Ministry of Home Affairs  
F.F.Division (INA Cell)  
Lok Nayak Bhavan, Khan Market  
New Delhi.

..... Respondents

Writ Petition filed under Article 226 of the Constitution  
of India praying for issuance of Writ of Mandamus, directing the  
respondents to pay to the petitioner the Freedom Fighter's  
Pension allowable to K.P.Muthaiah from the date of his first  
application viz., 07.09.1972 till the date of his death viz.,  
24.06.2002 and thereafter, to the petitioner for her lifetime.

For Petitioners : Mr.K.Sakthivel

For Respondents : Mr.J.Madana Gopal Rao

SCGSC

## O R D E R

The prayer sought for in this writ petition is to direct the respondents to pay the Freedom Fighter Pension allowable to one K.P.Muthaiah, husband of the first petitioner herein, from the date of his first application viz., 07.09.1972 till the date of his death viz., 24.06.2002 and thereafter, to the first petitioner for her lifetime.

2. The necessary facts which are required to be noticed for the disposal of this writ petition are as follows:-

2.1 The first petitioner's husband one K.P.Muthaiah had involved in the Freedom struggle, for which, he had been imprisoned in the year 1945 and in fact, he was lodged for six months in prison at Jagarcha and Nilaganj camp jail. Subsequently, because of efflux of time, the jail records have been destroyed.

2.2. In appreciation of the service rendered by the first petitioner's husband to the nation, the then District Collector of South Arcot District, Tamil Nadu issued a copper shield vide his letter No.M.1.16787/73 dated 11.08.1973.

2.3 The first petitioner's husband had applied to the State Government on 27.05.1968, seeking for State Government Pension for Freedom Fighters. The State Government after having considered the documents and having satisfied with his eligibility, based on the records submitted by him, had sanctioned the State Government pension, vide proceedings of the Chief Secretary, State of Tamil Nadu, in proceedings No.FF.PO.NO.4044/69 dated 02.07.1969. Accordingly, the first petitioner's husband was receiving the State Government pension, till his lifetime.

2.4 Thereafter, the first petitioner's husband had applied for the Central Government Pension to the respondents, by his application dated 07.09.1972. The said application submitted by the first petitioner's husband, for Central Government pension, was, after having been scrutinised, forwarded by the State authorities to the Central Government for necessary action, vide their communication dated 04.06.1973. In spite of the said application dated 07.09.1972, of the first petitioner's husband, having been forwarded by the State Government on 04.06.1973 itself, the Central Government authorities had not come forward to grant Central Government pension to the first petitioner's husband.

2.5 In fact, the first petitioner's husband till his lifetime, has sent several reminders to the Central Government authorities, for grant of Central Government Freedom Fighters pension to the first petitioner's husband and those reminders

were sent by the first petitioner's husband on the following dates:

"07.09.1973, 20.06.1980, 09.10.1980, 08.09.1981, 02.04.1982, 17.12.1983, 24.10.1983, 29.03.1984, 08.08.1984, 21.06.1985, 12.12.1985, 19.07.1987, 25.07.1989 and 27.12.1989."

2.6 It is the further case of the first petitioner, as averred in the affidavit that, All India I.N.A. Committee appointed by the All India Congress Committee under the chairmanship of Shrimathi Indira Gandhi, has issued a certificate, certifying that the first petitioner's husband was a political sufferer, as such he is entitled to all the concessions allowed to other political sufferers vide Government of India, Ministry of Home Affairs, letter No.4/6/61-Ests(C) dated 23.05.1961. Moreover, the Secretary, Indian National Army League, Madurai had also issued a certificate, recommending for the Central Government pension to the first petitioner's husband. In spite of all these documents having been produced and applications having been made with relevant documents, the Central Government, especially, the respondents, have not come forward to grant the Central Government Freedom Fighters pension to the first petitioner's husband, till his lifetime and the first petitioner's husband also died on 24.06.2002. Even after the death of the first petitioner's husband, no further action had been taken to sanction the Central Government pension to the first petitioner's husband during his lifetime from the date of his application i.e. on 07.09.1972 and subsequently, to the first petitioner. Only in that circumstances, the first petitioner had approached this Court and filed this writ petition with the above said prayer.

3. The learned counsel appearing for the petitioner would invite the attention of this Court on the Certificate issued by the Indian National Army League, Madurai, dated 14.03.1968, stating that the said K.P.Muthiah, the first petitioner's husband herein has served in the Indian National Army and the content of the said certificate is extracted hereunder:

INDIAN NATIONAL ARMY LEAGUE

MADURAI-1

இந்திய தேசிய ராணுவத்தினர் கழகம், மதுரை

Date 14.3.1968

C e r t i f i c a t e

This is to certify that Shri K.P.Muthiah son of Shri Periyakaruppan, Vembarpatti, Keelanalli P.O. Pudukottah - trichy district is well known to me and he has served in the Indian National Army. His statement furnished in his application for the issue of a certificate is true to the best of my knowledge

and belief and I strongly recommend that the necessary certificate be kindly be issued to him."

Jai Hind  
Secretary  
Sd/-  
I.N.A. LEAGUE  
Madurai.

4. The learned counsel has also invited the attention of this Court to the certificate issued by the All India I.N.A. Committee, appointed by the All India Congress Committee, under the chairmanship of Shrimati Indira Gandhi, dated 22.04.1968 and the content of the said Certificate is extracted hereunder for easy reference:

All-India I.N.A Committee  
Appointed by:  
The All-India Congress Committee  
-----  
Chairman  
Shrimati Indira Gandhi  
Telephone 273535 82, Dayyaganj,  
Ref: No.8/2/9411/EMP Delhi-6  
22<sup>nd</sup> April 1968  
Certificate

This is to certify that Shri K.P.Muthiah was a member of the Indian National Army. He is a political sufferer and as such is entitled to all the concessions allowed to other political sufferers vide Government of India, Ministry of Home affairs, letter No.4/6/61-Ests(C) dated 23<sup>rd</sup> May, 1961.

His Particulars are as under :

Father's name. Shri Periyakaruppan  
Indian Army Indian National Army  
Regtl.No.  
Rank. Civilian Sepoy  
Unit -- 2/5 Guerilla Regt  
Home address :

Village Vembarpatti  
Post Office Keelanalli  
Taluk Pudukottah  
District Trichy  
Character while in the INA VERY GOOD.  
(Sd) -----

Seal : /true copy/

(Jagdev Singh) Col.INA.  
Joint Secretary

N.B.Please note that I was formerly residing at Vembarpatti.

Now I am residing in the following address:

K.P.Muthiah,  
Ladies Hostel, Annamalainagar Post,  
Chidambaram Taluk (South Arcot Dt)

5. The learned counsel also submitted that on the strength of these certificates and other relevant documents, since the State Government has already sanctioned Freedom Fighters pension to the first petitioner's husband, the applications submitted to the Central Government authorities duly forwarded by the State Government on 04.06.1973, should have been considered at the earliest point of time and the Central Government should have sanctioned the pension to the first petitioner's husband. The respondents, if at all found any deficiencies in the certificate or any further compliance required from the first petitioner's husband, the same should have been informed to the first petitioner's husband, but in spite of several reminders made by the first petitioner's husband for several years, as has been referred to above, no reply has been received from the respondents and the said application submitted by the first petitioner's husband in the year 1972 had been kept pending, without passing any orders and therefore, the first petitioner i.e. wife of the Freedom Fighter would be eligible and entitled to get the Central Government Freedom Fighters Pension arrears to the first petitioner's husband and subsequently, the pension for the wife of the Freedom Fighter.

6. The learned counsel for the petitioner also informed this Court that, during the pendency of the writ petition, the first petitioner i.e. the wife of the Freedom Fighter also died on 19.09.2006 and therefore, her legal heirs i.e., the petitioners 2 to 6 have been impleaded as parties / petitioners, vide orders of this Court dated 03.08.2016. Therefore, the learned counsel for the petitioners submitted that, these petitioners 2 to 6 are entitled to get pension arrears for the Freedom Fighters pension of the Central Government for their father and subsequently, after his death, to their mother.

7. I have heard Mr.J.Madana Gopal Rao, learned Senior Central Government Standing Counsel appearing for the respondents.

8. The learned Senior Central Government Standing Counsel appearing for the respondents would submit that, no doubt that the State Government has sanctioned the Freedom Fighters pension to the first petitioner's husband, depending upon the scheme formulated by the State Government. Insofar as sanctioning of the Central Government pension to the political sufferers / Freedom Fighters are concerned, the scheme had been envisaged by

the Government of India and based on that scheme, what are all the requirements for consideration for grant of the said pension should have been fulfilled by the claimant. The learned Senior Central Government Standing Counsel would further submit that, though it was claimed by the first petitioner that, her husband had made an application to the Central Government authorities on 07.09.1972, whether such application had been submitted and if so, whether any subsequent disposal have been made, cannot be proved at this length of time, as very long years have gone by. The learned Senior Central Government Standing Counsel appearing for the respondents would further submit that, if at all the first petitioner's husband had made an application for the Central Government Freedom Fighters pension, along with the application, had submitted all the relevant documents in order and forward the required documents, as per the scheme formulated by the Central Government, certainly, such application would be disposed of on merits then and there. At any rate, since there is no proof to show that, the application said to have been made by the petitioner on 07.09.1972, is pending consideration before the second respondent authority, no mandamus can be issued against the respondent to sanction the Freedom Fighters pension to the first petitioner's husband.

9. I have heard the said rival submissions made by the learned counsels appearing for the petitioners as well as the respondents.

10. It is not in dispute that the first petitioner's husband was one of the Freedom Fighters and because of which, he had been imprisoned. In support of his claim, the learned counsel for the petitioner had produced a certificate issued by the Indian National Army League, Madurai, as early as on 14.03.1968 and also a certificate issued by the All India I.N.A. Committee appointed by the All India Congress Committee under the Chairmanship of Shrimathi Indira Gandhi, dated 22.04.1968. On the strength of these documents and certificates, the first petitioner's husband had already applied to the State Government pension scheme for Freedom Fighters and accordingly, that was sanctioned to the first petitioner's husband by the State Government on 02.07.1969 itself and accordingly, he had been receiving the Freedom Fighters pension from the State Government till his lifetime i.e. upto 24.06.2002 and subsequently, after his death, by his wife i.e. the first petitioner herein who received the pension till 19.09.2006.

11. Further, it is the claim of the first petitioner that, during her lifetime, her husband, a Freedom Fighter had made an application to the respondent for Central Government Freedom Fighter pension on 07.09.1972. The said application, in fact was routed through the State authorities and in this

regard, a communication made by the State Government through the Public Department dated 04.06.1973, discloses the following:

GOVERNMENT OF TAMIL NADU

Memorandum No: 712/73-3  
Public (General.P IV) Department,  
Fort St.George, Madras .9.  
Dated : 4.6.73.

Subject : Freedom Fighters - Central Government

Pension Scheme - Application of Thiru /  
K.P.Muthiah.

Reference : From Thiru / K.P.Muthiah  
Application dated : 7.9.72.

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Thiru/ K.P.Muthiah is informed that his /  
application for the grant of pension under the  
Central Government Pension Scheme has been forwarded  
to the Government of India with this Government's  
letter No. 712/73-2, Public (General.PIV) dated:  
4.6.73. Further correspondence may be made with the  
Government of India direct.

T.D.Sundar Raj,  
Deputy Secretary to Government

To  
Thiru/ K.P.Muthia.,  
Annamalainagar, Chidambaram Taluk, South Arcot  
district.

Forwarded / By order

Sd/-  
Superintendent.

सत्यमेव जयते

12. Since the first petitioner's husband made an application on 07.09.1972, to the Central Government for Freedom Fighters pension, and the same had been duly forwarded by the State authorities on 04.06.1973 and to that effect, a communication was also sent to the first petitioner's husband on that day itself, it cannot be argued by the learned Senior Central Government Standing Counsel appearing for the respondents that, whether the first petitioner's husband had made an application with relevant documents to the Central Government authorities was itself, doubtful.

13. Since the first petitioner's husband's application

had been duly forwarded for further action to the Central Government authorities and it is evident from the communication of the State Government dated 04.06.1973 and subsequently, it is claimed by the first petitioner that, her husband had sent several reminders from the year of 1973 till 1989, it can be safely concluded that the first petitioner's husband had made an application for Central Government Freedom Fighter pension on 07.09.1972.

14. If the application had been sent long years back i.e. on 07.09.1972, and admittedly, there is no communication from the respondents so far, the first petitioner has made out a case that, they are entitled to get their applications, filed for the Freedom Fighters Pension, to be decided on merits and the Central Government pension has to be sanctioned.

15. Here in this case, the participation of the first petitioner's husband in the Freedom struggle cannot be put into dispute any more, in view of the fact that, his service to the nation has been recognized by the State authorities and accordingly, the State Government Pension was sanctioned by the State authorities from 02.07.1969 itself. When that being the position, there cannot be further impediment for the Central Government to consider the request of the first petitioner's husband and grant Central Government pension.

16. Grant of pension to the political sufferers or Freedom Fighters, who rendered their valuable service in getting freedom to this great nation, cannot be lightly dealt with, by any one in this country. Their service to the nation is immeasurable. Had they not fought for freedom, we the 1.2 Billion Indians cannot live in with liberty, rights, dignity and with economical sufficiency. If any small amount is paid to them, by way of Freedom Fighter pension either by the State Government or by the Central Government, it is not a bonus or bounty to such great soul, as it shall be considered only a token of recognition for the valuable services the great personalities rendered to the nation. Therefore, whenever the application for Freedom Fighter pension is received by the authorities either the Central Government or the State Government, top priority must have been given to decide such application, of course on the basis of the documents, certificates etc., submitted by the claimants to the authorities, as per the scheme formulated by the respective Governments.

17. Here in the case in hand, since the first petitioner's husband has been in jail for six months, for having participated in the Freedom struggle and to support his claim, the certificates have been issued by the Indian National Army

League, Madurai and All India I.N.A. Committee, New Delhi and based on which, the State Government also since have sanctioned pension to the first petitioner's husband in the year 1969, this Court is of the firm view that the first petitioner's husband is certainly eligible and entitled to claim the Central Government pension. However, for the reasons unknown to anyone, it has been either not considered or not decided for all these years.

18. In view of the above said facts and position, which has been discussed, this Court is of the considered view that the writ petition is to be allowed and the relief sought for herein is to be granted.

19. In the result, the following orders are passed in this writ petition:

(a) The respondents are hereby directed to bestow their immediate attention on the application of the Freedom Fighter namely, Late K.P.Muthiah, father of the present impleaded petitioners, dated 07.09.1972, as duly forwarded by the State Government authorities on 04.06.1973, in Memorandum No.712/73-3, Public (General.PIV) Department, Fort St.George, Madras-9 and sanction such pension to the father of the impleaded petitioners 2 to 6 from 07.09.1972, the date on which the said application was made, till 24.06.2002, the date on which the Freedom Fighter died and also sanction pension to the Freedom Fighter's wife, the first petitioner deceased namely one Mrs.M.Anjalai from 25.06.2002 till 19.09.2006, the date on which the said Anjalai (wife of the Freedom Fighter) died and calculate the arrears of such pension, as directed above, and pay the same to the present petitioners 2 to 6, who are the legal heirs of the Freedom Fighter.

(b) The needful shall be done by the respondents, within a period of three months from the date of receipt of a copy of this order.

(c) Since the application of the Freedom Fighter was of the year 1972 i.e. 07.09.1972, a copy of the said application along with relevant documents shall be forwarded by the petitioners 2 to 6, to the respondents office within a period of two weeks from the date of receipt of a copy of this order.

(d) On receipt of such copy of the application and documents from the petitioners 2 to 6, the needful as indicated above, shall be undertaken by the respondents within the time stipulated, thereafter.

With these directions, this writ petition is allowed. No costs.

Sd/-  
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

mk

To

1.The Secretary  
The Union of India  
Ministry of Home Affairs, New Delhi.

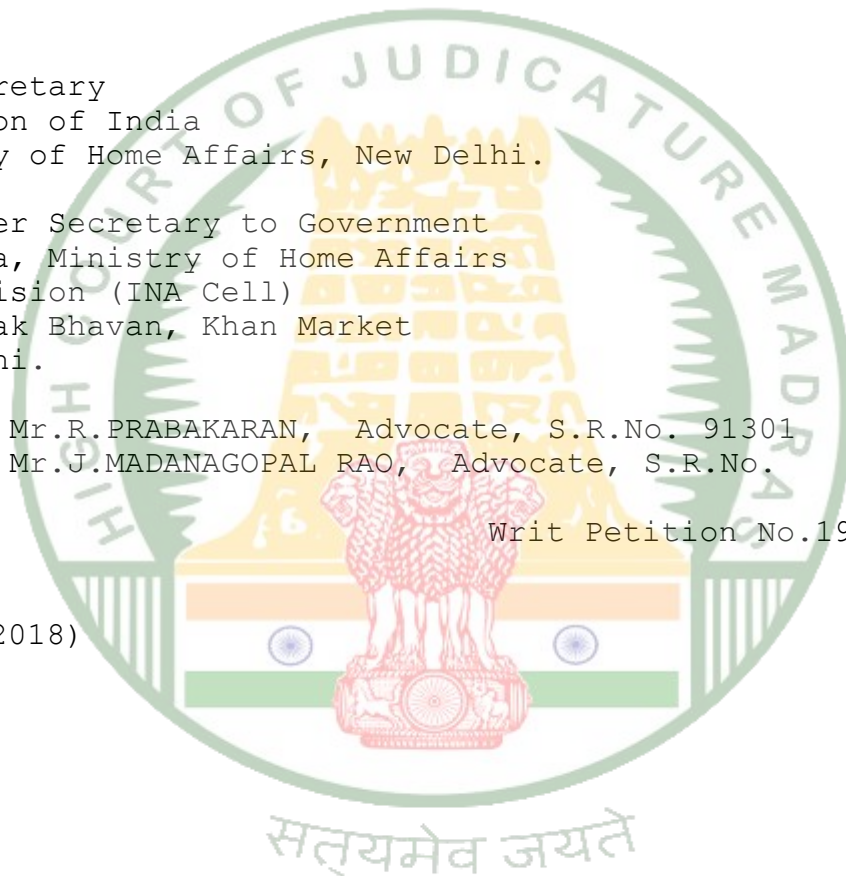
2.The Under Secretary to Government  
of India, Ministry of Home Affairs  
F.F.Division (INA Cell)  
Lok Nayak Bhavan, Khan Market  
New Delhi.

+1cc to Mr.R.PRABAKARAN, Advocate, S.R.No. 91301

+1cc to Mr.J.MADANAGOPAL RAO, Advocate, S.R.No.

Writ Petition No.19238 of 2003

CNR(CO)  
TR(14/02/2018)



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